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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/234,036	01/19/1999	SERGE AYER	A31491-A	6571

7590 08/15/2002

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EXAMINER

HARVEY, DAVID E

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/234,036

Applicant(s)
Ayer et al

Examiner
David E. Harvey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 25, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-58 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-55 is/are allowed.
- 6) ☒ Claim(s) 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. The examiner notes that the present application is a *CIP* of parent application 09/013,772.

With respect to the disclosure of parent application, the current disclosure has at least added further system applications [e.g. lines 24-30 on page 8 and lines 1-6 on page 9]. Because the current pending claims encompass these new applications, the current pending claims are not entitled to the priority date of the parent application.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogner [US Patent #4,843,483], Strong [WO 90/04848], and Bauer [DE 4, 135,385], in view of Taiichiro et al. [JP 10-243382].

I. The showing of Bogner, Strong, and Bauer:

Bogner, Strong, and Bauer have been cited because they evidence the fact that it was notoriously well known in the art to have compared respective video sequences by:

- 1) generating respective sequences representing an event performed by different people;
- 2) synchronizing the respective video sequences based on different reference points in a temporal and/or spatial domain; and
- 3) simultaneously displaying the respective synchronized video sequences on a common monitor so as to allow the sequences to be compared.

II. Differences:

Claim 1 differs from the showing of Bogner, Strong, and Bauer in that Bogner, Strong, and Bauer only suggest using a “split screen” technique to display the respective sequences simultaneously.

III. Obviousness:

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Taiichiro et al. evidences the fact that, in such video sequence comparisons systems, it was known and conventional to have projected the images of the respective video sequences onto a common focal plane [see figure 7] as an alternative to the “split screen” technique. Being such, the examiner maintains that it would have been obvious to one of ordinary skill in the art to have projected the synchronized video sequences Bogner, Strong, and Bauer onto a common focal place (e.g. via superposition) as an alternative to the disclosed “split screen” approach. The following is noted:

- 1) Bogner, Strong, and Bauer evidence the fact that it was known to have used the image comparison feature to have captured sequences relating to various “racing” events (skiing, bobsledding, skating, etc,...) [e.g. lines 13-19 of Bogner]. While “car racing” was not explicitly listed, it would have been an obvious use in view of these explicitly described “racing” applications.
- 2) Bogner, Strong, and Bauer evidence the fact that it was known that it was known to have synchronized the sequences using temporal or spatial references points and scaling [e.g. lines 1-19 on page 4 of Strong].
- 3) Bogner, Strong, and Bauer evidence the fact that it was known to have captured the sequence of the later occurring event using the same camera parameters (e.g. including “focal plane”) as that used to capture the earlier

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occurring event with which the latter event is to be compared [e.g. the abstract of Bauer and lines 13-17 of Strong].

4) In simultaneously displaying two video sequences using superposition, the image frames the respective sequences would necessarily be combined frame by frame.

5) While not explicitly stated, it would have been obvious to one of ordinary skill in the art that the captured video sequences could have had a captured audio sequence too. When such was the case, it would have been obvious to one skilled in the art to have combined the audio tracks too.

6) The recitations stating that the image comparison “invention” can be used for “biomedical” purposes or for “car crash test purposes” are considered to be little more than recitations of intended use rendered obvious by the showing of record; e.g. for example, the examiner notes that comparing biomotion, e.g. the arm swing of a golfer, was a known application.

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 33-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,320,624.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claims are of a broad scope which would improperly extend the "right to exclude" already granted by claims 1-24 of the parent application.

6. Claims 33-55 avoid the art of record.

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7. Any inquiry concerning this communication should be directed to **David E. Harvey** whose telephone number is **(703) 305-4365**. The examiner can normally be reached Monday-Friday between the hours of 9:30 AM and 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. John W. Miller, can be reached at (703) 305-4795.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231


or faxed to:

(703) 872-9314

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA. Sixth Floor (Receptionist).

Any inquiry of general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose number is (703) 306-0377.

DEH 8/02


DAVID E. HARVEY
PRIMARY EXAMINER